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March 1, 2019

*Via ECF*

Hon. Analisa Torres  
United States District Judge  
500 Pearl Street, Room 15D  
United States Courthouse  
Southern District of New York  
New York, NY 10007

RE: Parties' Joint Status Report, *Essar Steel Algoma, Inc. v. Southern Coal Sales Corporation*,  
Case No. 1:17-mc-00360-AT

Dear Judge Torres:

In advance of the March 6, 2019 status conference in the above-captioned matter, Plaintiff Essar Steel Algoma, Inc. ("Algoma") and Defendants Nevada Holdings, Inc., f/k/a Southern Coal Sales Corporation ("Southern Coal"); James C. Justice Companies, Inc.; James C. Justice Companies, LLC; Bluestone Industries, Inc.; Bluestone Coal Corporation; Bluestone Mineral, Inc., f/k/a Mechel Bluestone; Bluestone Energy Sales Corporation, A&G Coal Corporation, Tams Management Inc.; Encore Leasing LLC; Bluestone Resources Inc.; Justice Family Farms, LLC; and Southern Coal Corporation submit the following joint status report to apprise Your Honor of the current status of the case and issues that are currently outstanding.

**Procedural History:** Algoma first filed this matter in the District of Delaware Bankruptcy Court in March 2017. Six months later, in September 2017, the case was transferred to this Court after months of briefing on Southern Coal's Motion to Transfer.

Thereafter, the parties engaged in discovery until April 2018, when Southern Coal's prior counsel withdrew during the peak of fact discovery. This matter was then informally stayed for almost three months until Southern Coal found new counsel. On August 8, 2018, shortly after Southern Coal retained new counsel, the parties submitted a joint request to Your Honor to extend the discovery schedule (dkt. 51). On August 13, 2018, Your Honor granted in part and denied in part the joint motion, and set a discovery schedule (dkt. 52).

On September 5, 2018, Algoma sought leave to file a Second Amended Complaint (dkt. 53) to add additional defendants that are parents, subsidiaries, affiliates, or owners of defendant Southern Coal Sales Corporation and supporting alter-ego allegations. Southern Coal opposed this request (dkt. 54). Shortly thereafter, Your Honor referred this matter to Magistrate Judge Lehrburger (dkt. 56). On October 29, 2018, Judge Lehrburger granted in part and denied in part



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Algoma's motion for leave to file its Second Amended Complaint (dkt. 71). Your Honor affirmed the Order on Wednesday, February 27, 2019 (dkt. 127).

Judge Lehrburger issued several other orders extending the discovery deadlines (*see, e.g.*, dkt. 66, dkt. 97). On January 10, Judge Lehrburger set the current schedule, concluding fact discovery on February 13, 2019, and setting expert discovery deadlines in February and March 2019 (dkt. 115).

On February 27, 2019, Your Honor set the briefing schedule on Southern Coal's motion to dismiss (dkt. 128).

**Algoma's Claims:** Algoma has brought claims against Southern Coal for breach of contract arising from Southern Coal's failure to supply coal in quantities and of a quality set forth in the parties' various coal supply agreements. Specifically, Algoma seeks approximately \$5.5 million in cover damages for Southern Coal's failure to deliver 154,637 of the 200,000 tons that the Term Sheet required Southern Coal to deliver, plus the extraordinary transportation costs of approximately \$1.2 million it incurred with respect to the delivery of those tons. Algoma additionally seeks cover damages of approximately \$4.2 million for Southern Coal's failure to deliver the additional 378,837 of the 780,000 tons the Amending Agreement required Southern Coal to deliver to Algoma. Additionally, Algoma seeks approximately \$1.2 million in damages (penalty amounts set forth in the Coal Supply Agreement) for Southern Coal's failure to deliver coal that met the quality specifications set forth in the Coal Supply Agreement and its amendments. Algoma claims that Southern Coal is an alter ego of many of its affiliated companies under common ownership and seeks to hold those affiliated companies liable for Southern Coal's breach of contract. This case will not be tried to a jury, and the parties anticipate needing five days for a bench trial.

**Pending Motions / Issues for Resolution:**

- There is no Case Management Order currently in place. Judge Lehrburger's January 10, 2019 Order (dkt. 115) sets the current deadlines for expert discovery, and Your Honor's February 27, 2019 Order sets the briefing schedule on Southern Coal's motion to dismiss (dkt. 128).
- On February 27, 2019, Algoma provided its Expert Disclosures to Southern Coal, as well as the report of its expert John M. Stark, CPA/ABV, CFF. Mr. Stark's report, including Exhibits, is 103 pages and relates entirely to the alter-ego claims asserted in Algoma's Second Amended Complaint. The briefing on the newly-added Defendants' Motion to Dismiss will conclude on April 17, 2019 (dkt.128).



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- Defendants' Position: Defendants intend to file a letter seeking leave to file a Motion to extend briefing on the Motion to Dismiss and to continue the deadline for Defendants to respond to Mr. Stark's report, as well as seeking leave to file a Motion to allow Defendants to take discovery from Mr. Stark and others related to the alter-ego claims asserted in the Second Amended Complaint.<sup>1</sup>
- Plaintiff's Position: Plaintiff would prefer to go forward with the conclusion of expert discovery, but Plaintiff is willing to work with Defendants to accommodate scheduling expert discovery. Defendants are, of course, entitled to take an expert deposition of Mr. Stark.
- Plaintiff disclosed an expert on cokemaking, Shawn Galey, pursuant to Rule 26(a)(2)(C) of the Federal Rules of Civil Procedure. Mr. Galey is an employee of Algoma.
  - Defendant's Position: The work performed to date by Southern Coal's expert (as well as certain information regarding coal testing done by Algoma's own employee Shawn Galey, who is designated as an expert in Algoma's Expert Disclosures filed February 27, 2019) raises questions as to whether Algoma has fully and completely responded to Southern Coal's Discovery Requests. In the event the parties are not able to resolve this issue themselves, Southern Coal anticipates filing a letter seeking leave to file a Motion to compel discovery and to reopen discovery. In addition, and in light of information uncovered by Southern Coal's expert regarding Algoma's purchase of coal from third-party sources when it was contractually obligated to make such purchases from Southern Coal, Southern Coal anticipates filing a letter seeking leave to file a Motion to Amend its Answer to the Second Amended Complaint to assert a Counterclaim.
  - Plaintiff's Position: Algoma produced certain documents along with its expert disclosures which Mr. Galey identified as relevant to his expert opinions. These documents were not previously produced because they were not within the scope of document collection agreed to by the parties (although some of the documents were produced previously in other versions). To the extent that Defendants indicate that they have obtained additional evidence from third parties regarding Algoma's purchase of coal, Algoma welcomes the opportunity to review it.

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<sup>1</sup> Defendants will not seek any extensions to provide their expert report as to the claims included in the original and First Amended Complaints herein concerning coal quality and testing issues.



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- The parties believe this case **should not** be referred to a Magistrate Judge for settlement discussions.

The parties look forward to speaking with Your Honor next week.

Very truly yours,

*/s/ Kip T. Bollin*  
Counsel for Essar Steel Algoma, Inc.

*/s/ Richard A. Getty*  
Counsel for Southern Coal Sales Corporation

cc: All counsel of record (*via ecf*)